

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEITH ANDERSON,

Plaintiff,

v.

KITSAP COUNTY JAIL, CONMED
INC, JOHNSON, MCKEAY LAW
FIRM,

Defendants.

CASE NO. 3:15-CV-05414-BHS-DWC

ORDER TO SHOW CAUSE OR
AMEND

Plaintiff Keith Anderson, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint under 28 U.S.C. § 1915A, the Court declines to serve Plaintiff's Complaint but provides Plaintiff leave to file an amended pleading by August 24, 2015, to cure the deficiencies identified herein.

BACKGROUND

In his Complaint, Plaintiff appears to name the following three entities as Defendants: (1) Kitsap County Jail; (2) CONMED; and (3) Johnson, McKeay Law Firm.¹ Dkt. 11. Plaintiff

¹ The actual language in the Complaint identifies Defendants as: Kitsap County Jail and "Conmed and Johnson, McKeay law firm". Dkt. 11, pp. 1, 3. An internet search indicates "Conmed, Inc." as a corporation which provides medical services to prisons. This may or may not be the entity Plaintiff is naming as a Defendant. In addition, "Johnson, McKeay Law Firm" may be a legal entity Plaintiff is naming as a Defendant, but Plaintiff may also be intending to name "Johnson" as a Defendant along with

alleges a “[f]ailure to provide adequate medical care.” *Id.* at p. 3. The Complaint contains no other allegations or factual assertions. *See id.*

DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a violation of rights protected by the Constitution or created by federal statute, and (2) the violation was proximately caused by a person acting under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). To satisfy the second prong, a plaintiff must allege facts showing how individually named defendants caused, or personally participated in causing, the harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

A. Eighth Amendment Claim

Plaintiff alleges he received inadequate medical care. Dkt. 11. Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (internal citation omitted); *see Hudson v. McMillan*,

“McKeay Law Firm” as a Defendant. Plaintiff should clarify the specific persons and/or entities he is naming as Defendants.

1 503 U.S. 1, 6 (1992). An Eighth Amendment medical claim has two elements: (1) “the
2 seriousness of the prisoner’s medical need and [(2)] the nature of the defendant’s response to that
3 need.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.1991), *overruled on other grounds by*
4 *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir.1997) (en banc).

5 A medical need is serious “if the failure to treat the prisoner’s condition could result in
6 further significant injury or the ‘unnecessary and wanton infliction of pain.’” *McGuckin*, 974
7 F.2d at 1059 (*quoting Estelle*, 429 U.S. at 104). “The existence of an injury that a reasonable
8 doctor or patient would find important and worthy of comment or treatment; the presence of a
9 medical condition that significantly affects an individual’s daily activities; or the existence of
10 chronic and substantial pain are examples of indications that a prisoner has a ‘serious’ need for
11 medical treatment.” *Id.* at 1059-1060.

12 If a plaintiff shows he suffered from a serious medical need, he must then show the
13 prison officials responded to the need with deliberate indifference. *See Farmer v. Brennan*, 511
14 U.S. 825, 834 (1970). Deliberate indifference to a prisoner’s serious medical need requires “a
15 purposeful act or failure to act on the part of the defendant.” *McGuckin*, 974 F.2d at 1060. In
16 other words, “[a] defendant must purposefully ignore or fail to respond to a prisoner’s pain or
17 possible medical need.” *Id.* A prison official, accordingly, will not be found deliberately
18 indifferent to a prisoner’s serious medical needs, “unless the official knows of and disregards an
19 excessive risk to inmate health or safety.” *Farmer*, 511 U.S. at 837. “[T]he official must both be
20 aware of facts from which the inference could be drawn that a substantial risk of serious harm
21 exists, and he must also draw the inference.” *Id.*

1 Plaintiff has not alleged he suffers from a serious medical need. Dkt. 11. He also fails to
2 allege Defendants knew of and disregarded Plaintiff's serious medical need. Therefore, Plaintiff
3 has failed to state an Eighth Amendment claim of deliberate indifference.

4 **B. Improper Defendant**

5 Plaintiff has named the Kitsap County Jail as a Defendant. Dkt. 11. The Kitsap County
6 Jail is a local governmental unit and is, therefore, not a legal entity capable of being sued. *See*
7 *Bradford v. City of Seattle*, 557 F.Supp.2d 1189, 1207 (W.D. Wash. 2008); *Mahoney v. Kitsap*
8 *County Jail*, 2010 WL 5394821, *3 (W.D. Wash. Nov. 8, 2010). Any claim alleged against
9 Kitsap County Jail should be dismissed with prejudice. *See Mahoney*, 2010 WL 5394821 at *3.
10 If Plaintiff is seeking to allege a constitutional violation based on a policy or custom, the
11 appropriate party is the county itself, not the particular municipal department or facility where
12 the alleged violation occurred. *See Bradford*, 557 F.Supp.2d at 1207.

13 **C. Instruction to Plaintiff and the Clerk**

14 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
15 amended complaint and within the amended complaint, he must write a short, plain statement
16 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the
17 person who violated the right; (3) exactly what the individual did or failed to do; (4) how the
18 action or inaction of the individual is connected to the violation of Plaintiff's constitutional
19 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*
20 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976).

21 Plaintiff shall present the amended complaint on the form provided by the Court. The
22 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original
23 and not a copy, it should contain the same case number, and it may not incorporate any part of
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1 the original complaint by reference. The amended complaint will act as a complete substitute for
2 the original Complaint, and not as a supplement. The Court will screen the amended complaint to
3 determine whether it contains factual allegations linking each defendant to the alleged violations
4 of Plaintiff's rights. The Court will not authorize service of the amended complaint on any
5 defendant who is not specifically linked to a violation of Plaintiff's rights.

6 If Plaintiff fails to file an amended complaint or fails to adequately address the issues
7 raised herein on or before August 24, 2015, the undersigned will recommend dismissal of this
8 action as frivolous pursuant to 28 U.S.C. § 1915.

9 The Clerk is directed to provide Plaintiff with the appropriate forms for filing a 42 U.S.C.
10 § 1983 civil rights complaint and for service.

11 Dated this 22nd day of July, 2015.

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14 David W. Christel
United States Magistrate Judge
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